

GIBSON, DUNN & CRUTCHER LLP
Orin Snyder (*pro hac vice*)
osnyder@gibsondunn.com
200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

Kristin A. Linsley (SBN 154148)
klinsley@gibsondunn.com
Martie Kutscher (SBN 302650)
mkutscherclark@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Telephone: 415.393.8200
Facsimile: 415.393.8306

Attorneys for Defendant Facebook, Inc.

GIBSON, DUNN & CRUTCHER LLP
Deborah Stein (SBN 224570)
dstein@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

Joshua S. Lipshutz (SBN 242557)
jlipshutz@gibsondunn.com
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Telephone: 202.955.8500
Facsimile: 202.467.0539

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**DECLARATION OF MICHAEL DUFFEY
IN SUPPORT OF DEFENDANT
FACEBOOK, INC.'S OPPOSITION TO
PLAINTIFFS' MOTION FOR LEAVE TO
FILE SECOND AMENDED
CONSOLIDATED COMPLAINT**

Judge: Hon. Vince Chhabria
Courtroom 4, 17th Floor
Hearing Date: June 4, 2020
Hearing Time: 2:00 p.m.

I, Michael Duffey, declare as follows:

1. I am an eDiscovery and Litigation Case Manager in the Legal Department of Facebook, Inc. (“Facebook Inc.”), a party in the above-captioned action. I work at Facebook Inc.’s headquarters in Menlo Park, California. I offer this declaration in support of Facebook Inc.’s Opposition to Plaintiffs’ Motion for Leave to File Second Amended Consolidated Complaint (ECF 397). I have personal knowledge of the facts set forth in this declaration (unless otherwise noted), and, if called to testify, I could and would competently testify to them.

2. As part of my responsibilities for Facebook Inc., I have access to corporate information about Facebook Inc. and its subsidiaries.

3. Facebook’s platform and services are provided to Facebook users in the United States by Facebook Inc. Facebook Inc. is incorporated in Delaware and has its principal place of business in Menlo Park, California.

4. Facebook’s platform and services are provided to Facebook users in Europe, including in the United Kingdom, by Facebook Ireland Limited (“Facebook Ireland”). Facebook Ireland is a subsidiary of Facebook Inc. Facebook Ireland is organized under the laws of the Republic of Ireland and has its principal place of business in Dublin, Ireland.

5. As part of my job responsibilities, I am familiar with Facebook’s user agreements, which have been referred to at different times as the “Terms of Use,” “Statement of Rights and Responsibilities,” and “Terms of Service.”

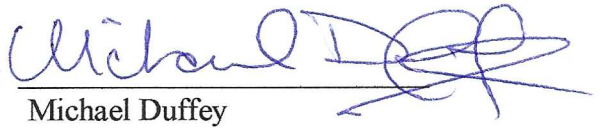
6. Attached hereto as **Exhibit 1** is a true and correct copy of the version of the Terms of Service for Facebook Ireland that was in effect in the United Kingdom from May 25, 2018, to July 30, 2019 (the “2018 Terms”). Facebook Ireland progressively rolled out the 2018 Terms to U.K. users from April 18-26, 2018, and the 2018 Terms took effect on May 25, 2018. Facebook Ireland also launched a new Data Policy and Cookies Policy on that same date. During the time that the 2018 Terms were in effect, they governed U.K. Facebook users’ use the Facebook platform and services, which the Terms refer to as “the Facebook Products.” Attached hereto as **Exhibit 2** is a true and correct copy of the page that defines “the Facebook Products” to include the Facebook platform and services.

7. Attached hereto as **Exhibit 3** is a true and correct copy of the version of the Terms of Service for Facebook Ireland that has been in effect since July 31, 2019 (the “2019 Terms”). The 2019 Terms currently govern U.K. Facebook users’ use of the Facebook Products.

8. As part of the update to its terms and policies in 2018, Facebook Ireland launched a “GDPR user engagement flow”, which introduced the 2018 Terms, the updated Data Policy, and the updated Cookies Policy to users in, among other places, the United Kingdom. As part of this process, Facebook users in the U.K. had to accept the 2018 Terms to continue using Facebook’s platform and services (Facebook did not request or require consent to or acceptance of any document other than the 2018 Terms). To this end, a banner was displayed to Facebook users in the U.K. over their News Feed (viewable on both desktop and mobile versions of the Facebook Service) that prompted them to launch and complete the GDPR user engagement flow and either accept the 2018 Terms by May 24, 2018, or download their information and leave Facebook. Specifically, when the GDPR user engagement flow was launched, users were presented with a description of the Terms, a hyperlink to the Terms’ full content, and a statement that “By tapping ‘I Accept,’ you accept the updated Terms. If you don’t want to accept the Terms, see your options.” A user who clicked on the hyperlink to “see your options” was given the option to download their data and delete their account. Starting on May 25, 2018, Facebook users in the U.K. who had not accepted the 2018 Terms could not access Facebook until they completed the user engagement flow and accepted the 2018 Terms or opted to delete their account.

9. Attached hereto as **Exhibit 4** is a screenshot from the GDPR user engagement flow that shows the screen that was presented to U.K. Facebook users as part of the GDPR user engagement flow prompting them to accept the 2018 Terms. Facebook cannot locate the records showing that the U.K. Plaintiffs accepted the 2018 Terms without the U.K. Plaintiffs’ user IDs or the phone numbers or e-mail addresses associated with their accounts, and at this time Facebook does not have access to that information. But the banner prompting U.K. Facebook users to launch and complete the GDPR user engagement flow was presented to every U.K. Facebook user above their News Feed.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. Executed at Redwood City, California, on the 19th day of May, 2020.

By: 
Michael Duffey